

software or technology is subject to the EAR.

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 54543, Oct. 21, 1996; 61 FR 65464, Dec. 13, 1996; 61 FR 68578, Dec. 30, 1996; 62 FR 25456, May 9, 1997; 63 FR 50520, Sept. 22, 1998; 64 FR 13339, Mar. 18, 1999; 64 FR 42011, Aug. 3, 1999; 65 FR 2496, Jan. 14, 2000; 65 FR 60854, Oct. 13, 2000; 65 FR 62604, Oct. 19, 2000; 66 FR 42109, Aug. 10, 2001; 67 FR 10610, 10613, Mar. 8, 2002; 67 FR 38860, June 6, 2002; 68 FR 35784, June 17, 2003; 69 FR 5690, Feb. 6, 2004; 69 FR 5929, Feb. 9, 2004; 69 FR 71359, Dec. 9, 2004]

§ 734.5 Activities of U.S. and foreign persons subject to the EAR.

The following kinds of activities are subject to the EAR:

(a) Certain activities of U.S. persons related to the proliferation of nuclear explosive devices, chemical or biological weapons, missile technology as described in § 744.6 of the EAR, and the proliferation of chemical weapons as described in part 745 of the EAR.

(b) Activities of U.S. or foreign persons prohibited by any order issued under the EAR, including a Denial Order issued pursuant to part 766 of the EAR.

(c) Technical assistance by U.S. persons with respect to encryption commodities or software as described in § 744.9 of the EAR.

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 68578, Dec. 30, 1996; 64 FR 27141, May 18, 1999; 64 FR 47105, Aug. 30, 1999]

§ 734.6 Assistance available from BIS for determining licensing and other requirements.

(a) If you are not sure whether a commodity, software, technology, or activity is subject to the EAR, or is subject to licensing or other requirements under the EAR, you may ask BIS for an advisory opinion, classification, or a determination whether a particular item or activity is subject to the EAR. In many instances, including those where the item is specially designed, developed, configured, adapted, or modified for military application, the item may fall under the licensing jurisdiction of the Department of State and may be subject to the controls of the International Traffic in Arms Regulations (22 CFR parts 120 through 130) (ITAR). In order to determine if the Department of State has licensing ju-

risdiction over an item, you should submit a request for a commodity jurisdiction determination to the Department of State, Directorate of Defense Trade Controls. Exporters should note that in a very limited number of cases, the categories of items may be subject to both the ITAR and the EAR. The relevant departments are working to eliminate any unnecessary overlaps that may exist.

(b) As the agency responsible for administering the EAR, BIS is the only agency that has the responsibility for determining whether an item or activity is subject to the EAR and, if so, what licensing or other requirements apply under the EAR. Such a determination only affects EAR requirements, and does not affect the applicability of any other regulatory programs.

(c) If you need help in determining BIS licensing or other requirements you may ask BIS for help by following the procedures described in § 748.3 of the EAR.

§ 734.7 Published information and software.

(a) Information is “published” when it becomes generally accessible to the interested public in any form, including:

(1) Publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution (See Supplement No. 1 to this part, Questions A(1) through A(6));

(2) Ready availability at libraries open to the public or at university libraries (See Supplement No. 1 to this part, Question A(6));

(3) Patents and open (published) patent applications available at any patent office; and

(4) Release at an open conference, meeting, seminar, trade show, or other open gathering.

(i) A conference or gathering is “open” if all technically qualified members of the public are eligible to attend and attendees are permitted to